

Form **990**Department of the Treasury
Internal Revenue Service**Return of Organization Exempt From Income Tax**Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except black lung
benefit trust or private foundation)

▶ The organization may have to use a copy of this return to satisfy state reporting requirements

OMB No 1545-0047

2002Open to Public
Inspection**A** For the 2002 calendar year, or tax year period beginning **JUL 1, 2002** and ending **JUN 30, 2003****B** Check if
applicable

- ☐ Address
change
- ☐ Name
change
- ☐ Initial
return
- ☐ Final
return
- ☐ Amended
return
- ☐ Application
pending

Please
use IRS
label or
print or
type
See
Specific
Instruc-
tions**C** Name of organization**INSTITUTE FOR JUSTICE**

Number and street (or P O box if mail is not delivered to street address)

1717 PENNSYLVANIA AVENUE, NW

Room/suite

200

City or town, state or country, and ZIP + 4

WASHINGTON, DC 20006**D** Employer identification number**52-1744337****E** Telephone number**(202) 955-1300****F** Accounting method: ☐ Cash ☒ Accrual
☐ Other (specify) ▶• Section 501(c)(3) organizations and 4947(a)(1) nonexempt charitable trusts
must attach a completed Schedule A (Form 990 or 990-EZ)**H and I are not applicable to section 527 organizations****H(a)** Is this a group return for affiliates? ☐ Yes ☒ No**H(b)** If "Yes," enter number of affiliates ▶**H(c)** Are all affiliates included? **N/A** ☐ Yes ☐ No
(If "No," attach a list)**H(d)** Is this a separate return filed by an or-
ganization covered by a group ruling? ☐ Yes ☒ No**I** Enter 4-digit GEN ▶**M** Check ☐ if the organization is **not** required to attach
Sch. B (Form 990, 990-EZ, or 990-PF)**G** Web site ▶ **WWW.IJ.ORG****J** Organization type (check only one) ☒ 501(c)(3) (insert no.) ☐ 4947(a)(1) or ☐ 527**K** Check here ☐ if the organization's gross receipts are normally not more than \$25,000. The
organization need not file a return with the IRS, but if the organization received a Form 990 Package
in the mail, it should file a return without financial data. **Some states require a complete return.****L** Gross receipts. Add lines 6b, 8b, 9b, and 10b to line 12 ▶ **6,689,981.****Part I Revenue, Expenses, and Changes in Net Assets or Fund Balances**

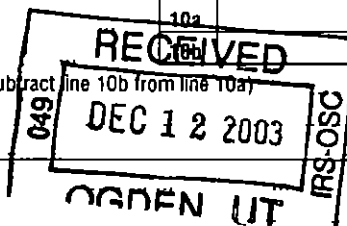
Revenue	1	Contributions, gifts, grants, and similar amounts received					
	a	Direct public support	1a	6,028,230.			
	b	Indirect public support	1b				
	c	Government contributions (grants)	1c				
	d	Total (add lines 1a through 1c) (cash \$ 6,028,230. noncash \$)	1d	6,028,230.			
	2	Program service revenue including government fees and contracts (from Part VII, line 93)	2	141,089.			
	3	Membership dues and assessments	3				
	4	Interest on savings and temporary cash investments	4	146,948.			
	5	Dividends and interest from securities	5				
	6a	Gross rents	6a				
6b	Less: rental expenses	6b					
6c	Net rental income or (loss) (subtract line 6b from line 6a)	6c					
7	Other investment income (describe ▶)	7					
Expenses	8a	Gross amount from sale of assets other than inventory	(A) Securities	373,714.	8a		
	b	Less: cost or other basis and sales expenses	374,322.	8b			
	c	Gain or (loss) (attach schedule)	<608.>	8c			
	d	Net gain or (loss) (combine line 8c, columns (A) and (B))	STMT 1	8d	<608.>		
	9	Special events and activities (attach schedule)					
	a	Gross revenue (not including \$ of contributions reported on line 1a)	9a				
	b	Less: direct expenses other than fundraising expenses	9b				
	c	Net income or (loss) from special events (subtract line 9b from line 9a)	9c				
	10a	Gross sales of inventory, less returns and allowances	10a				
	b	Less: cost of goods sold	10b				
10c	Gross profit or (loss) from sales of inventory (attach schedule) (subtract line 10b from line 10a)	10c					
Net Assets	11	Other revenue (from Part VII, line 103)	11				
	12	Total revenue (add lines 1d, 2, 3, 4, 5, 6c, 7, 8d, 9c, 10c, and 11)	12	6,315,659.			
	13	Program services (from line 44, column (B))	13	4,009,616.			
	14	Management and general (from line 44, column (C))	14	670,104.			
	15	Fundraising (from line 44, column (D))	15	571,184.			
	16	Payments to affiliates (attach schedule)	16				
	17	Total expenses (add lines 16 and 44, column (A))	17	5,250,904.			
	18	Excess or (deficit) for the year (subtract line 17 from line 12)	18	1,064,755.			
	19	Net assets or fund balances at beginning of year (from line 73, column (A))	19	6,863,599.			
	20	Other changes in net assets or fund balances (attach explanation)	20	<3,034.>			
21	Net assets or fund balances at end of year (combine lines 18, 19, and 20)	21	7,925,320.				

223001
01-22-03

LHA For Paperwork Reduction Act Notice, see the separate instructions

Form 990 (2002)

SCANNED DEC 23 2003



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Part II Statement of Functional Expenses All organizations must complete column (A) Columns (B), (C), and (D) are required for section 501(c)(3) and (4) organizations and section 4947(a)(1) nonexempt charitable trusts but optional for others Page 2

Do not include amounts reported on line 6b, 8b, 9b, 10b, or 16 of Part I	(A) Total	(B) Program services	(C) Management and general	(D) Fundraising
22 Grants and allocations (attach schedule)				
cash \$ _____ noncash \$ _____	22			
23 Specific assistance to individuals (attach schedule)	23			
24 Benefits paid to or for members (attach schedule)	24			
25 Compensation of officers, directors, etc	25 460,607.	375,621.	45,377.	39,609.
26 Other salaries and wages	26 2,195,399.	1,790,328.	216,279.	188,792.
27 Pension plan contributions	27 177,798.	132,575.	24,526.	20,697.
28 Other employee benefits	28 119,660.	92,565.	13,919.	13,176.
29 Payroll taxes	29 180,499.	145,342.	18,276.	16,881.
30 Professional fundraising fees	30 18,974.	14,106.	240.	4,628.
31 Accounting fees	31 38,647.		38,647.	
32 Legal fees	32 64.		64.	
33 Supplies	33 57,571.	42,466.	12,056.	3,049.
34 Telephone	34 69,168.	54,804.	9,884.	4,480.
35 Postage and shipping	35 134,223.	52,979.	4,556.	76,688.
36 Occupancy	36 449,766.	335,025.	66,082.	48,659.
37 Equipment rental and maintenance	37 18,930.	15,477.	2,368.	1,085.
38 Printing and publications	38 243,999.	150,012.	4,481.	89,506.
39 Travel	39 322,700.	268,065.	45,016.	9,619.
40 Conferences, conventions, and meetings	40 12,564.	12,266.	298.	
41 Interest	41			
42 Depreciation, depletion, etc (attach schedule)	42 147,524.	111,018.	20,348.	16,158.
43 Other expenses not covered above (itemize)				
a _____	43a			
b _____	43b			
c _____	43c			
d _____	43d			
e SEE STATEMENT 3	43e 602,811.	416,967.	147,687.	38,157.
44 Total functional expenses (add lines 22 through 43)	44 5,250,904.	4,009,616.	670,104.	571,184.

Joint Costs Check ☐ if you are following SOP 98-2

Are any joint costs from a combined educational campaign and fundraising solicitation reported in (B) Program services? ☐ Yes ☒ No

If "Yes," enter (i) the aggregate amount of these joint costs \$ _____ (ii) the amount allocated to Program services \$ _____

(iii) the amount allocated to Management and general \$ _____, and (iv) the amount allocated to Fundraising \$ _____

Part III Statement of Program Service Accomplishments

What is the organization's primary exempt purpose? **SEE STATEMENT 4**

All organizations must describe their exempt purpose achievements in a clear and concise manner. State the number of clients served, publications issued, etc. Discuss achievements that are not measurable (Section 501(c)(3) and (4) organizations and 4947(a)(1) nonexempt charitable trusts must also enter the amount of grants and allocations to others.)

Program Service Expenses
(Required for 501(c)(3) and (4) orgs. and 4947(a)(1) trusts, but optional for others.)

a LITIGATIONS AND BRIEFS TO PROTECT CONSTITUTIONAL RIGHTS OF CLIENTS; EDUCATION THROUGH BROCHURES, EVENTS, MEDIA AND SPEECHES NATIONWIDE; TRAINING OF LAW STUDENTS AND UNDERGRADUATES.	(Grants and allocations \$ _____)	4,009,616.
b _____	(Grants and allocations \$ _____)	
c _____	(Grants and allocations \$ _____)	
d _____	(Grants and allocations \$ _____)	
e Other program services (attach schedule)	(Grants and allocations \$ _____)	
f Total of Program Service Expenses (should equal line 44 column (B), Program services)		4,009,616.

Part IV Balance Sheets

Note Where required, attached schedules and amounts within the description column should be for end-of-year amounts only

		(A) Beginning of year		(B) End of year
Assets	45 Cash - non-interest-bearing	699,027.	45	1,028,769.
	46 Savings and temporary cash investments		46	
	47 a Accounts receivable	47a 17,218.		
	b Less allowance for doubtful accounts	47b	47c	17,218.
	48 a Pledges receivable	48a 381,000.		
	b Less allowance for doubtful accounts	48b	48c	381,000.
	49 Grants receivable		49	
	50 Receivables from officers, directors, trustees, and key employees		50	
	51 a Other notes and loans receivable	51a		
	b Less allowance for doubtful accounts	51b	51c	
	52 Inventories for sale or use		52	
	53 Prepaid expenses and deferred charges	121,777.	53	145,330.
	54 Investments - securities STMT 5 <input type="checkbox"/> Cost <input checked="" type="checkbox"/> FMV	4,336,103.	54	5,381,826.
	55 a Investments - land, buildings, and equipment basis	55a		
	b Less accumulated depreciation	55b	55c	
56 Investments - other SEE STATEMENT 6	835,000.	56	835,000.	
57 a Land, buildings, and equipment basis	57a 1,025,027.			
b Less accumulated depreciation STMT 7	57b 668,576.	57c	356,451.	
58 Other assets (describe <input type="checkbox"/>)		58		
59 Total assets (add lines 45 through 58) (must equal line 74)	7,010,151.	59	8,145,594.	
Liabilities	60 Accounts payable and accrued expenses	82,613.	60	151,637.
	61 Grants payable		61	
	62 Deferred revenue		62	
	63 Loans from officers, directors, trustees, and key employees		63	
	64 a Tax-exempt bond liabilities		64a	
	b Mortgages and other notes payable		64b	
	65 Other liabilities (describe <input type="checkbox"/> CAPITAL LEASE OBLIGATION)	63,939.	65	68,637.
66 Total liabilities (add lines 60 through 65)	146,552.	66	220,274.	
Net Assets or Fund Balances	Organizations that follow SFAS 117, check here <input checked="" type="checkbox"/> and complete lines 67 through 69 and lines 73 and 74			
	67 Unrestricted	6,472,463.	67	7,246,110.
	68 Temporarily restricted	391,136.	68	679,210.
	69 Permanently restricted		69	
	Organizations that do not follow SFAS 117, check here <input type="checkbox"/> and complete lines 70 through 74			
	70 Capital stock, trust principal, or current funds		70	
	71 Paid-in or capital surplus, or land, building, and equipment fund		71	
	72 Retained earnings, endowment, accumulated income, or other funds		72	
	73 Total net assets or fund balances (add lines 67 through 69 or lines 70 through 72, column (A) must equal line 19, column (B) must equal line 21)	6,863,599.	73	7,925,320.
74 Total liabilities and net assets / fund balances (add lines 66 and 73)	7,010,151.	74	8,145,594.	

Form 990 is available for public inspection and, for some people, serves as the primary or sole source of information about a particular organization. How the public perceives an organization in such cases may be determined by the information presented on its return. Therefore, please make sure the return is complete and accurate and fully describes, in Part III, the organization's programs and accomplishments.

Part IV-A Reconciliation of Revenue per Audited Financial Statements with Revenue per Return		Part IV-B Reconciliation of Expenses per Audited Financial Statements with Expenses per Return	
a Total revenue, gains, and other support per audited financial statements	▶ a	a Total expenses and losses per audited financial statements	▶ a
	6,312,625.		5,250,904.
b Amounts included on line a but not on line 12, Form 990	▶ b	b Amounts included on line a but not on line 17, Form 990	▶ b
(1) Net unrealized gains on investments \$ <3,034.>	<3,034.>	(1) Donated services and use of facilities \$	
(2) Donated services and use of facilities \$		(2) Prior year adjustments reported on line 20, Form 990 \$	
(3) Recoveries of prior year grants \$		(3) Losses reported on line 20, Form 990 \$	
(4) Other (specify) \$		(4) Other (specify) \$	
Add amounts on lines (1) through (4)	▶ b <3,034.>	Add amounts on lines (1) through (4)	▶ b 0.
c Line a minus line b	▶ c 6,315,659.	c Line a minus line b	▶ c 5,250,904.
d Amounts included on line 12, Form 990 but not on line a	▶ d	d Amounts included on line 17, Form 990 but not on line a	▶ d
(1) Investment expenses not included on line 6b, Form 990 \$	0.	(1) Investment expenses not included on line 6b, Form 990 \$	0.
(2) Other (specify) \$		(2) Other (specify) \$	
Add amounts on lines (1) and (2)	▶ d 0.	Add amounts on lines (1) and (2)	▶ d 0.
e Total revenue per line 12, Form 990 (line c plus line d)	▶ e 6,315,659.	e Total expenses per line 17, Form 990 (line c plus line d)	▶ e 5,250,904.

Part V List of Officers, Directors, Trustees, and Key Employees (List each one even if not compensated)				
(A) Name and address	(B) Title and average hours per week devoted to position	(C) Compensation (If not paid, enter -0-)	(D) Contributions to employee benefit plans & deferred compensation	(E) Expense account and other allowances
SEE STATEMENT 8		460,607.	88,892.	0.

75 Did any officer, director, trustee, or key employee receive aggregate compensation of more than \$100,000 from your organization and all related organizations, of which more than \$10,000 was provided by the related organizations? If "Yes," attach schedule ▶ ☐ Yes ☒ No

Part VI Other Information		Yes	No
76	Did the organization engage in any activity not previously reported to the IRS? If "Yes" attach a detailed description of each activity	76	X
77	Were any changes made in the organizing or governing documents but not reported to the IRS? If "Yes," attach a conformed copy of the changes	77	X
78 a	Did the organization have unrelated business gross income of \$1,000 or more during the year covered by this return?	78a	X
b	If "Yes," has it filed a tax return on Form 990-T for this year? N/A	78b	
79	Was there a liquidation, dissolution, termination, or substantial contraction during the year? If "Yes" attach a statement	79	X
80 a	Is the organization related (other than by association with a statewide or nationwide organization) through common membership, governing bodies, trustees, officers, etc., to any other exempt or nonexempt organization?	80a	X
b	If "Yes" enter the name of the organization _____ and check whether it is <input type="checkbox"/> exempt or <input type="checkbox"/> nonexempt		
81 a	Enter direct or indirect political expenditures. See line 81 instructions. 81a 0.		
b	Did the organization file Form 1120-POL for this year?	81b	X
82 a	Did the organization receive donated services or the use of materials, equipment, or facilities at no charge or at substantially less than fair rental value?	82a	X
b	If "Yes," you may indicate the value of these items here. Do not include this amount as revenue in Part I or as an expense in Part II. (See instructions in Part III.) 82b N/A		
83 a	Did the organization comply with the public inspection requirements for returns and exemption applications?	83a	X
b	Did the organization comply with the disclosure requirements relating to quid pro quo contributions?	83b	X
84 a	Did the organization solicit any contributions or gifts that were not tax deductible? N/A	84a	
b	If "Yes," did the organization include with every solicitation an express statement that such contributions or gifts were not tax deductible? N/A	84b	
85	501(c)(4), (5), or (6) organizations a Were substantially all dues nondeductible by members? N/A	85a	
b	Did the organization make only in-house lobbying expenditures of \$2,000 or less? N/A	85b	
	If "Yes" was answered to either 85a or 85b, do not complete 85c through 85h below unless the organization received a waiver for proxy tax owed for the prior year.		
c	Dues, assessments, and similar amounts from members 85c N/A		
d	Section 162(e) lobbying and political expenditures 85d N/A		
e	Aggregate nondeductible amount of section 6033(e)(1)(A) dues notices 85e N/A		
f	Taxable amount of lobbying and political expenditures (line 85d less 85e) 85f N/A		
g	Does the organization elect to pay the section 6033(e) tax on the amount on line 85f? N/A	85g	
h	If section 6033(e)(1)(A) dues notices were sent, does the organization agree to add the amount on line 85f to its reasonable estimate of dues allocable to nondeductible lobbying and political expenditures for the following tax year? N/A	85h	
86	501(c)(7) organizations Enter a Initiation fees and capital contributions included on line 12 86a N/A		
b	Gross receipts included on line 12, for public use of club facilities 86b N/A		
87	501(c)(12) organizations Enter a Gross income from members or shareholders 87a N/A		
b	Gross income from other sources (Do not net amounts due or paid to other sources against amounts due or received from them) 87b N/A		
88	At any time during the year, did the organization own a 50% or greater interest in a taxable corporation or partnership or an entity disregarded as separate from the organization under Regulations sections 301.7701-2 and 301.7701-3? If "Yes" complete Part IX	88	X
89 a	501(c)(3) organizations Enter Amount of tax imposed on the organization during the year under section 4911 0., section 4912 0., section 4955 0.		
b	501(c)(3) and 501(c)(4) organizations Did the organization engage in any section 4958 excess benefit transaction during the year or did it become aware of an excess benefit transaction from a prior year? If "Yes," attach a statement explaining each transaction	89b	X
c	Enter Amount of tax imposed on the organization managers or disqualified persons during the year under sections 4912, 4955, and 4958		0.
d	Enter Amount of tax on line 89c, above, reimbursed by the organization		0.
90 a	List the states with which a copy of this return is filed SEE STATEMENT 9		
b	Number of employees employed in the pay period that includes March 12, 2002 90b 37		
91	The books are in care of THE ORGANIZATION Telephone no 202-955-1300		

Located at 1717 PENNSYLVANIA AVE, NW, WASHINGTON, DC

ZIP +4 20006

92 Section 4947(a)(1) nonexempt charitable trusts filing Form 990 in lieu of Form 1041 - Check here ☐
and enter the amount of tax-exempt interest received or accrued during the tax year

92

N/A

Part VII Analysis of Income-Producing Activities (See page 31 of the instructions)

	Unrelated business income		Excluded by section 512 513 or 514		(E) Related or exempt function income
	(A) Business code	(B) Amount	(C) Exclu- sion code	(D) Amount	
93 Program service revenue					
a ATTORNEY'S FEES					97,375.
b HONORARIA					21,437.
c MISCELLANEOUS					22,277.
d					
e					
f Medicare/Medicaid payments					
g Fees and contracts from government agencies					
94 Membership dues and assessments					
95 Interest on savings and temporary cash investments			14	146,948.	
96 Dividends and interest from securities					
97 Net rental income or (loss) from real estate					
a debt-financed property					
b not debt-financed property					
98 Net rental income or (loss) from personal property					
99 Other investment income					
100 Gain or (loss) from sales of assets other than inventory			18	<608.>	
101 Net income or (loss) from special events					
102 Gross profit or (loss) from sales of inventory					
103 Other revenue					
a					
b					
c					
d					
e					
104 Subtotal (add columns (B), (D), and (E))		0.		146,340.	141,089.
105 Total (add line 104, columns (B), (D), and (E))					287,429.

Note Line 105 plus line 1d, Part I, should equal the amount on line 12, Part I

Part VIII Relationship of Activities to the Accomplishment of Exempt Purposes (See page 32 of the instructions)

Line No ▼	Explain how each activity for which income is reported in column (E) of Part VII contributed importantly to the accomplishment of the organization's exempt purposes (other than by providing funds for such purposes)
	SEE STATEMENT 10

Part IX Information Regarding Taxable Subsidiaries and Disregarded Entities (See page 32 of the instructions)

(A) Name, address, and EIN of corporation, partnership, or disregarded entity	(B) Percentage of ownership interest	(C) Nature of activities	(D) Total income	(E) End-of-year assets
N/A	%			
	%			
	%			
	%			

Part X Information Regarding Transfers Associated with Personal Benefit Contracts (See page 33 of the instructions)

(a) Did the organization, during the year, receive any funds, directly or indirectly, to pay premiums on a personal benefit contract? ☐ Yes ☒ No

(b) Did the organization, during the year, pay premiums, directly or indirectly, on a personal benefit contract? ☐ Yes ☒ No

Note If "Yes" to (b), file Form 8870 and Form 4720 (see instructions)

Please Sign Here	Under penalty of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief this return is correct and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.	
	Signature of officer <i>William H McElwain</i>	Date 1/7/07 Type or print name and title WILLIAM H McELWAIN, President
Paid Preparer's Use Only	Preparer's signature <i>Johnny</i>	Date 2/08/03
	Firm's name (or yours if self-employed), address and ZIP + 4 RUBINO & MCGHEEHAN, CHARTERED 6905 ROCKLEDGE DRIVE, SUITE 700 BETHESDA, MD 20817	Check if self-employed <input type="checkbox"/> Preparer's SSN or PTIN EIN Phone no 301-564-3636

SCHEDULE A
(Form 990 or 990-EZ)

Department of the Treasury
Internal Revenue Service

Organization Exempt Under Section 501(c)(3)

(Except Private Foundation) and Section 501(e), 501(f), 501(k),
501(n), or Section 4947(a)(1) Nonexempt Charitable Trust

Supplementary Information-(See separate instructions.)

► **MUST be completed by the above organizations and attached to their Form 990 or 990-EZ**

OMB No 1545-0047

2002

Name of the organization

INSTITUTE FOR JUSTICE

Employer identification number

52 1744337

Part I Compensation of the Five Highest Paid Employees Other Than Officers, Directors, and Trustees

(See page 1 of the instructions. List each one. If there are none, enter "None.")

(a) Name and address of each employee paid more than \$50,000	(b) Title and average hours per week devoted to position	(c) Compensation	(d) Contributions to employee benefit plans & deferred compensation	(e) Expense account and other allowances
JOHN E. KRAMER ----- 1717 PENNSYLVANIA AVE; WASHINGTON, DC	VP OF COMM. 40 HRS PER WK	132,051.	23,936.	
JOSEPH HOLT ----- 1717 PENNSYLVANIA AVE; WASHINGTON, DC	DR/IJ CLINIC 40 HRS PER WK	110,000.	2,741.	
SCOTT BULLOCK ----- 1717 PENNSYLVANIA AVE; WASHINGTON, DC	SR. ATTORNEY 40 HRS PER WK	98,671.	14,085.	
PATRICIA LEE ----- 1717 PENNSYLVANIA AVE; WASHINGTON, DC	MANAGING VP 40 HRS PER WK	217,000.	19,029.	21,319.
BETH STEVENS ----- 1717 PENNSYLVANIA AVE; WASHINGTON, DC	DR DEVELOP 40 HRS PER WK	98,708.	3,277.	
Total number of other employees paid over \$50,000 ►	11			

Part II Compensation of the Five Highest Paid Independent Contractors for Professional Services

(See page 2 of the instructions. List each one (whether individuals or firms). If there are none, enter "None.")

(a) Name and address of each independent contractor paid more than \$50,000	(b) Type of service	(c) Compensation
NONE ----- ----- ----- ----- ----- ----- ----- ----- ----- -----		
Total number of others receiving over \$50,000 for professional services ►	0	

Part III Statements About Activities (See page 2 of the instructions)

Yes No

- 1 During the year, has the organization attempted to influence national, state or local legislation, including any attempt to influence public opinion on a legislative matter or referendum? If "Yes" enter the total expenses paid or incurred in connection with the lobbying activities ► \$ 9,098. (Must equal amounts on line 38, Part VI-A or line 1 of Part VI-B) **VI-A, LINE 38B**

1 X

Organizations that made an election under section 501(h) by filing Form 5768 must complete Part VI-A. Other organizations checking "Yes," must complete Part VI-B AND attach a statement giving a detailed description of the lobbying activities.

- 2 During the year, has the organization, either directly or indirectly engaged in any of the following acts with any substantial contributors, trustees, directors, officers, creators, key employees, or members of their families, or with any taxable organization with which any such person is affiliated as an officer, director, trustee, majority owner, or principal beneficiary? (If the answer to any question is "Yes," attach a detailed statement explaining the transactions.)

a Sale, exchange, or leasing of property?

2a X

b Lending of money or other extension of credit?

2b X

c Furnishing of goods, services or facilities?

2c X

d Payment of compensation (or payment or reimbursement of expenses if more than \$1,000)? **SEE PART V, FORM 990**

2d X

e Transfer of any part of its income or assets?

2e X

- 3 Does the organization make grants for scholarships, fellowships, student loans, etc.? (See Note below)

3 X

- 4 Do you have a section 403(b) annuity plan for your employees?

4 X

Note Attach a statement to explain how the organization determines that individuals or organizations receiving grants or loans from it in furtherance of its charitable programs "qualify" to receive payments.

Part IV Reason for Non-Private Foundation Status (See pages 3 through 5 of the instructions)

The organization is not a private foundation because it is (Please check only ONE applicable box.)

- 5 ☐ A church, convention of churches, or association of churches. Section 170(b)(1)(A)(i).
- 6 ☐ A school. Section 170(b)(1)(A)(ii). (Also complete Part V.)
- 7 ☐ A hospital or a cooperative hospital service organization. Section 170(b)(1)(A)(iii).
- 8 ☐ A Federal, state, or local government or governmental unit. Section 170(b)(1)(A)(v).
- 9 ☐ A medical research organization operated in conjunction with a hospital. Section 170(b)(1)(A)(iii). Enter the hospital's name, city, and state ► _____
- 10 ☐ An organization operated for the benefit of a college or university owned or operated by a governmental unit. Section 170(b)(1)(A)(iv). (Also complete the **Support Schedule** in Part IV-A.)
- 11a ☒ An organization that normally receives a substantial part of its support from a governmental unit or from the general public. Section 170(b)(1)(A)(vi). (Also complete the **Support Schedule** in Part IV-A.)
- 11b ☐ A community trust. Section 170(b)(1)(A)(vi). (Also complete the **Support Schedule** in Part IV-A.)
- 12 ☐ An organization that normally receives (1) more than 33 1/3% of its support from contributions, membership fees, and gross receipts from activities related to its charitable, etc., functions - subject to certain exceptions, and (2) no more than 33 1/3% of its support from gross investment income and unrelated business taxable income (less section 511 tax) from businesses acquired by the organization after June 30, 1975. See section 509(a)(2). (Also complete the **Support Schedule** in Part IV-A.)
- 13 ☐ An organization that is not controlled by any disqualified persons (other than foundation managers) and supports organizations described in (1) lines 5 through 12 above, or (2) section 501(c)(4), (5), or (6), if they meet the test of section 509(a)(2). (See section 509(a)(3).)

Provide the following information about the supported organizations (See page 5 of the instructions.)

(a) Name(s) of supported organization(s)	(b) Line number from above

- 14 ☐ An organization organized and operated to test for public safety. Section 509(a)(4). (See page 5 of the instructions.)

Part IV-A Support Schedule (Complete only if you checked a box on line 10, 11, or 12) **Use cash method of accounting**
Note You may use the worksheet in the instructions for converting from the accrual to the cash method of accounting

Calendar year (or fiscal year beginning in) ▶	(a) 2001	(b) 2000	(c) 1999	(d) 1998	(e) Total
15 Gifts, grants, and contributions received (Do not include unusual grants. See line 28.)	5,616,962.	5,317,720.	4,977,680.	3,466,285.	19,378,647.
16 Membership fees received					
17 Gross receipts from admissions, merchandise sold or services performed, or furnishing of facilities in any activity that is related to the organization's charitable, etc. purpose	5,781.	0.	25,000.	59,000.	89,781.
18 Gross income from interest, dividends, amounts received from payments on securities loans (section 512(a)(5)), rents, royalties, and unrelated business taxable income (less section 511 taxes) from businesses acquired by the organization after June 30, 1975	140,121.	98,314.	144,960.	85,159.	468,554.
19 Net income from unrelated business activities not included in line 18					
20 Tax revenues levied for the organization's benefit and either paid to it or expended on its behalf					
21 The value of services or facilities furnished to the organization by a governmental unit without charge. Do not include the value of services or facilities generally furnished to the public without charge.					
22 Other income. Attach a schedule. Do not include gain or (loss) from sale of capital assets.	112,221.	7,689.	SEE STATEMENT 11 79,674.	14,239.	213,823.
23 Total of lines 15 through 22	5,875,085.	5,423,723.	5,227,314.	3,624,683.	20,150,805.
24 Line 23 minus line 17	5,869,304.	5,423,723.	5,202,314.	3,565,683.	20,061,024.
25 Enter 1% of line 23	58,751.	54,237.	52,273.	36,247.	
26 Organizations described on lines 10 or 11: a Enter 2% of amount in column (e), line 24					26a 401,220.
b Prepare a list for your records to show the name of and amount contributed by each person (other than a governmental unit or publicly supported organization) whose total gifts for 1998 through 2001 exceeded the amount shown in line 26a. Do not file this list with your return. Enter the sum of all these excess amounts.					26b 2,287,475.
c Total support for section 509(a)(1) test. Enter line 24, column (e).					26c 20,061,024.
d Add: Amounts from column (e) for lines 18 <u>468,554.</u> 19 <u> </u> 22 <u>213,823.</u> 26b <u>2,287,475.</u>					26d 2,969,852.
e Public support (line 26c minus line 26d total)					26e 17,091,172.
f Public support percentage (line 26e (numerator) divided by line 26c (denominator))					26f 85.1959%
27 Organizations described on line 12: a For amounts included in lines 15, 16, and 17 that were received from a "disqualified person," prepare a list for your records to show the name of and total amounts received in each year from each "disqualified person." Do not file this list with your return. Enter the sum of such amounts for each year: N/A					
(2001) (2000) (1999) (1998)					
b For any amount included in line 17 that was received from each person (other than "disqualified persons") prepare a list for your records to show the name of, and amount received for each year, that was more than the larger of (1) the amount on line 25 for the year or (2) \$5,000. (Include in the list organizations described in lines 5 through 11, as well as individuals.) Do not file this list with your return. After computing the difference between the amount received and the larger amount described in (1) or (2), enter the sum of these differences (the excess amounts) for each year: N/A					
(2001) (2000) (1999) (1998)					
c Add: Amounts from column (e) for lines 15 <u> </u> 16 <u> </u> 17 <u> </u> 20 <u> </u> 21 <u> </u>					27c N/A
d Add: Line 27a total <u> </u> and line 27b total <u> </u>					27d N/A
e Public support (line 27c total minus line 27d total)					27e N/A
f Total support for section 509(a)(2) test. Enter amount on line 23, column (e) ▶ 27f N/A					
g Public support percentage (line 27e (numerator) divided by line 27f (denominator))					27g N/A %
h Investment income percentage (line 18, column (e) (numerator) divided by line 27f (denominator))					27h N/A %

28 Unusual Grants For an organization described in line 10, 11, or 12 that received any unusual grants during 1998 through 2001, prepare a list for your records to show, for each year, the name of the contributor, the date and amount of the grant, and a brief description of the nature of the grant. Do not file this list with your return. Do not include these grants in line 15

NONE

Part V Private School Questionnaire (See page 7 of the instructions)

N/A

(To be completed ONLY by schools that checked the box on line 6 in Part IV)

	Yes	No
29 Does the organization have a racially nondiscriminatory policy toward students by statement in its charter, bylaws, other governing instrument, or in a resolution of its governing body?		
30 Does the organization include a statement of its racially nondiscriminatory policy toward students in all its brochures, catalogues and other written communications with the public dealing with student admissions, programs, and scholarships?		
31 Has the organization publicized its racially nondiscriminatory policy through newspaper or broadcast media during the period of solicitation for students or during the registration period if it has no solicitation program in a way that makes the policy known to all parts of the general community it serves? If "Yes," please describe, if "No," please explain (If you need more space, attach a separate statement)		
<hr/>		
<hr/>		
32 Does the organization maintain the following		
a Records indicating the racial composition of the student body, faculty and administrative staff?		
b Records documenting that scholarships and other financial assistance are awarded on a racially nondiscriminatory basis?		
c Copies of all catalogues, brochures, announcements, and other written communications to the public dealing with student admissions, programs, and scholarships?		
d Copies of all material used by the organization or on its behalf to solicit contributions? If you answered "No" to any of the above, please explain (If you need more space, attach a separate statement)		
<hr/>		
33 Does the organization discriminate by race in any way with respect to		
a Students' rights or privileges?		
b Admissions policies?		
c Employment of faculty or administrative staff?		
d Scholarships or other financial assistance?		
e Educational policies?		
f Use of facilities?		
g Athletic programs?		
h Other extracurricular activities? If you answered "Yes" to any of the above, please explain (If you need more space, attach a separate statement)		
<hr/>		
<hr/>		
34 a Does the organization receive any financial aid or assistance from a governmental agency?		
b Has the organization's right to such aid ever been revoked or suspended? If you answered "Yes" to either 34a or b, please explain using an attached statement		
35 Does the organization certify that it has complied with the applicable requirements of sections 4 01 through 4 05 of Rev. Proc. 75-50, 1975-2 C.B. 587, covering racial nondiscrimination? If "No," attach an explanation		

Part VI-A Lobbying Expenditures by Electing Public Charities (See page 9 of the instructions.)

(To be completed ONLY by an eligible organization that filed Form 5768)

Check ☒ a ☐ if the organization belongs to an affiliated groupCheck ☐ b ☐ if you checked "a" and "limited control" provisions apply

Limits on Lobbying Expenditures (The term "expenditures" means amounts paid or incurred.)		(a) Affiliated group totals	(b) To be completed for ALL electing organizations
		N/A	
36 Total lobbying expenditures to influence public opinion (grassroots lobbying)	36		9,098.
37 Total lobbying expenditures to influence a legislative body (direct lobbying)	37		0.
38 Total lobbying expenditures (add lines 36 and 37)	38		9,098.
39 Other exempt purpose expenditures	39		5,241,806.
40 Total exempt purpose expenditures (add lines 38 and 39)	40		5,250,904.
41 Lobbying nontaxable amount. Enter the amount from the following table -			
If the amount on line 40 is -	The lobbying nontaxable amount is -		
Not over \$500,000	20% of the amount on line 40		
Over \$500,000 but not over \$1,000,000	\$100,000 plus 15% of the excess over \$500,000		
Over \$1,000,000 but not over \$1,500,000	\$175,000 plus 10% of the excess over \$1,000,000		
Over \$1,500,000 but not over \$17,000,000	\$225,000 plus 5% of the excess over \$1,500,000		
Over \$17,000,000	\$1,000,000		
42 Grassroots nontaxable amount (enter 25% of line 41)	42		103,136.
43 Subtract line 42 from line 36. Enter -0- if line 42 is more than line 36	43		0.
44 Subtract line 41 from line 38. Enter -0- if line 41 is more than line 38	44		0.

Caution If there is an amount on either line 43 or line 44, you must file Form 4720**4-Year Averaging Period Under Section 501(h)**

(Some organizations that made a section 501(h) election do not have to complete all of the five columns below. See the instructions for lines 45 through 50 on page 11 of the instructions.)

Calendar year (or fiscal year beginning in) ▶	Lobbying Expenditures During 4-Year Averaging Period				
	(a) 2002	(b) 2001	(c) 2000	(d) 1999	(e) Total
45 Lobbying nontaxable amount	412,545.	387,270.	362,632.	322,269.	1,484,716.
46 Lobbying ceiling amount (150% of line 45(e))					2,227,074.
47 Total lobbying expenditures	9,098.	2,611.	16,742.	5,435.	33,886.
48 Grassroots nontaxable amount	103,136.	96,818.	90,658.	80,576.	371,188.
49 Grassroots ceiling amount (150% of line 48(e))					556,782.
50 Grassroots lobbying expenditures	9,098.	2,611.	16,742.	5,435.	33,886.

Part VI-B Lobbying Activity by Nonelecting Public Charities

(For reporting only by organizations that did not complete Part VI-A) (See page 11 of the instructions.)

N/A

During the year, did the organization attempt to influence national, state or local legislation, including any attempt to influence public opinion on a legislative matter or referendum, through the use of

- a Volunteers
- b Paid staff or management (Include compensation in expenses reported on lines c through h.)
- c Media advertisements
- d Mailings to members, legislators, or the public
- e Publications or published or broadcast statements
- f Grants to other organizations for lobbying purposes
- g Direct contact with legislators, their staffs, government officials, or a legislative body
- h Rallies, demonstrations, seminars, conventions, speeches, lectures, or any other means
- i Total lobbying expenditures (Add lines c through h.)

Yes	No	Amount
		0.

If "Yes" to any of the above, also attach a statement giving a detailed description of the lobbying activities

Asset No	Description	Date Acquired	Method	Life	Line No	Unadjusted Cost Or Basis	Bus % Excl	* Reduction In Basis	Basis For Depreciation	Accumulated Depreciation	Current Sec 179	Amount Of Depreciation
1	FURNITURE AND EQUIPMENT	VARI	ESSL	.000	16	384,283.			384,283.	217,113.		34,476.
2	COMPUTER AND SOFTWARE	VARI	ESSL	.000	16	378,436.			378,436.	190,652.		73,190.
3	LEASEHOLD IMPROVEMENTS	VARI	ESSL	.000	16	262,308.			262,308.	113,287.		39,858.
	* TOTAL 990 PAGE 2 DEPR					1025027.		0.	1025027.	521,052.	0.	147,524.

FORM 990	GAIN (LOSS) FROM PUBLICLY TRADED SECURITIES	STATEMENT	1
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DESCRIPTION	GROSS SALES PRICE	COST OR OTHER BASIS	EXPENSE OF SALE	NET GAIN OR (LOSS)
SALE OF INVESTMENTS	373,714.	374,322.	0.	<608.>
TO FORM 990, PART I, LINE 8	373,714.	374,322.	0.	<608.>

FORM 990	OTHER CHANGES IN NET ASSETS OR FUND BALANCES	STATEMENT	2
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DESCRIPTION	AMOUNT
UNREALIZED LOSSES ON INVESTMENTS	<3,034.>
TOTAL TO FORM 990, PART I, LINE 20	<3,034.>

FORM 990	OTHER EXPENSES	STATEMENT	3
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DESCRIPTION	(A) TOTAL	(B) PROGRAM SERVICES	(C) MANAGEMENT AND GENERAL	(D) FUNDRAISING
COURT FEES	5,510.	5,510.		
INDEPENDENT CONTRACTORS	144,414.	108,803.	12,296.	23,315.
MEALS	21,881.	18,246.	2,795.	840.
BOOKS & SUBSCRIPTIONS	28,018.	20,885.	4,851.	2,282.
INSURANCE	54,638.	46,554.	6,574.	1,510.
TRANSCRIPTS AND COURT REPORTERS	12,064.	12,017.	47.	
MEDIA RELATIONS	21,579.	21,564.		15.
ADVERTISING	35,721.	35,721.		
EVENTS	81,530.	72,284.	2,535.	6,711.
MISCELLANEOUS	90,036.	4,090.	85,946.	
LEGAL RESEARCH TOOL	71,293.	71,293.		
BANK CHARGES AND INTEREST	15,548.		15,548.	
PAYROLL SERVICES	3,542.		3,542.	
REPAIR & MAINTENANCE	13,553.		13,553.	
MAILING LIST RENTAL	3,484.			3,484.
TOTAL TO FM 990, LN 43	602,811.	416,967.	147,687.	38,157.

FORM 990	STATEMENT OF ORGANIZATION'S PRIMARY EXEMPT PURPOSE PART III	STATEMENT	4
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EXPLANATION

TO PROTECT THE CONSTITUTIONAL RIGHTS OF CLIENTS; AND TO EDUCATE THE PUBLIC THROUGH BROCHURES, EVENTS, MEDIA, AND SPEECHES NATIONWIDE.

FORM 990	NON-GOVERNMENT SECURITIES	STATEMENT	5
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SECURITY DESCRIPTION	CORPORATE STOCKS	CORPORATE BONDS	OTHER PUBLICLY TRADED SECURITIES	OTHER SECURITIES	TOTAL NON-GOV'T SECURITIES
CORPORATE DEBT		317,755.			317,755.
VANGUARD GROUP (MUTUAL FUNDS)				4,646,497.	4,646,497.
MONEY MARKET FUNDS				417,574.	417,574.
TO 990, LN 54 COL B		317,755.		5,064,071.	5,381,826.

FORM 990	OTHER INVESTMENTS	STATEMENT	6
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DESCRIPTION	VALUATION METHOD	AMOUNT
CERTIFICATES OF DEPOSIT	COST	835,000.
TOTAL TO FORM 990, PART IV, LINE 56, COLUMN B		835,000.

FORM 990	DEPRECIATION OF ASSETS NOT HELD FOR INVESTMENT	STATEMENT	7
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DESCRIPTION	COST OR OTHER BASIS	ACCUMULATED DEPRECIATION	BOOK VALUE
FURNITURE AND EQUIPMENT	384,283.	251,589.	132,694.
COMPUTER AND SOFTWARE	378,436.	263,842.	114,594.
LEASEHOLD IMPROVEMENTS	262,308.	153,145.	109,163.
TOTAL TO FORM 990, PART IV, LN 57	1,025,027.	668,576.	356,451.

FORM 990 PART V - LIST OF OFFICERS, DIRECTORS, STATEMENT 8
 TRUSTEES AND KEY EMPLOYEES

NAME AND ADDRESS	TITLE AND AVRG HRS/WK	COMPEN- SATION	EMPLOYEE BEN PLAN CONTRIB	EXPENSE ACCOUNT
DAVID B. KENNEDY 1717 PENNSYLVANIA AVENUE, NW WASHINGTON, DC	CHAIRMAN 1-2	0.	0.	0.
MARK BABUNOVIC 1717 PENNSYLVANIA AVENUE, NW WASHINGTON, DC	MEMBER 1-2	0.	0.	0.
ARTHUR DANTCHIK 1717 PENNSYLVANIA AVENUE, NW WASHINGTON, DC	MEMBER 1-2	0.	0.	0.
JAMES LINTOTT 1717 PENNSYLVANIA AVENUE, NW WASHINGTON, DC	MEMBER 1-2	0.	0.	0.
WILLIAM H. MELLOR 1717 PENNSYLVANIA AVENUE, NW WASHINGTON, DC	PRES & GENERAL COUNSEL 40	275,142.	44,446.	0.
CLINT BOLICK 1717 PENNSYLVANIA AVENUE, NW WASHINGTON, DC	VICE-PRES & SEC'Y 40	185,465.	44,446.	0.
GERRIT WORMHOUDT 1717 PENNSYLVANIA AVENUE, NW WASHINGTON, DC	MEMBER 1-2	0.	0.	0.
ROBERT A. LEVY 1717 PENNSYLVANIA AVENUE, NW WASHINGTON, DC	MEMBER 1-2	0.	0.	0.
ABIGAIL THERNSTROM 1717 PENNSYLVANIA AVENUE, NW WASHINGTON, DC	MEMBER 1-2	0.	0.	0.
STEPHEN W. MODZELEWSKI 1717 PENNSYLVANIA AVENUE, NW WASHINGTON, DC	MEMBER 1-2	0.	0.	0.
TOTALS INCLUDED ON FORM 990, PART V		460,607.	88,892.	0.

FORM 990	LIST OF STATES RECEIVING COPY OF RETURN PART VI, LINE 90	STATEMENT 9
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STATES

AL, AK, AZ, AR, CA, CT, DC, FL, GA, KS, KY, ME, MD, MA, MI, MN, MS, NH, NJ,
NM, NC, ND, OH, OK, OR, PA, RI, TN, UT, WA, WV, WI, NY, SC, VA, IL, MO

FORM 990	PART VIII - RELATIONSHIP OF ACTIVITIES TO ACCOMPLISHMENT OF EXEMPT PURPOSES	STATEMENT 10
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LINE	EXPLANATION OF RELATIONSHIP OF ACTIVITIES
93A	ATTORNEY FEES ARE ACCEPTED WHEN AN AMOUNT IS AWARDED BY THE COURT AND PAID BY THE OPPOSING PARTY OR WHEN AN AMOUNT IS AWARDED BY STATUE.
93B	SPEECHES PERTAINING TO THE INSTITUTE'S EXEMPT PURPOSE BY PROVIDING A MEANS OF EDUCATING THE PUBLIC.
93C	MISCELLANEOUS INCOME DIRECTLY RELATED TO THE INSTITUTE'S EXEMPT PURPOSE BY PROVIDING A MEANS TO PROTECT THE CONSTITUTIONAL RIGHTS OF CLIENTS.

SCHEDULE A	OTHER INCOME	STATEMENT 11
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DESCRIPTION	2001 AMOUNT	2000 AMOUNT	1999 AMOUNT	1998 AMOUNT
HONORARIA	4,181.	2,100.	2,000.	1,350.
MISCELLANEOUS	108,040.	5,589.	77,674.	12,889.
TOTAL TO SCHEDULE A, LINE 22	112,221.	7,689.	79,674.	14,239.

INSTITUTE FOR JUSTICE - CASE UPDATE

June 2003

EDUCATION

Holmes v. Bush; Florida Education Association v. State Board of Education

(Florida School Choice)

Court First District Court of Appeal

IJ Attorneys Clark Neily and Clint Bolick

Local Counsel Ken Sukhia

Following a summary judgment hearing in July, on August 5, 2002, the trial judge struck down the Opportunity Scholarship Program on the grounds that it violated Article I, Section 3 of the Florida Constitution, which provides that no revenue of the state may ever be taken from the treasury "directly or indirectly in aid of" any church or religious institution. Both the Intervenor and the State immediately filed notices of appeal, which had the effect of staying the trial court's decision. The Plaintiffs moved to dissolve the stay, but the trial court refused to do so (after requiring the State to post a bond). The Plaintiffs also attempted to by-pass the intermediate level appellate court and proceed directly to the Florida Supreme Court, but that request was likewise denied.

In his short opinion explaining his reasoning in striking down the program, the trial judge described the language of Article I, Section 3 as "clear and unambiguous," leaving "little room for interpretation or parsing." In reality, however, that provision has been construed several times by the Florida Supreme Court as not prohibiting religious institutions from receiving incidental benefits from general welfare programs with a secular purpose.

On October 15, 2002, we filed a brief with the court of appeals in which we explained that the trial court had clearly misinterpreted Article I, Section 3. The trial court's holding cannot be reconciled with existing Florida Supreme Court precedent, described above, nor can it be squared with the fact that the State has for years funded other public programs (including half a dozen education-related programs) in which religious institutions have always been permitted to participate on equal footing with non-religious institutions. And of course, that is precisely the spirit of neutrality that we have always argued the U.S. Constitution requires. Contrary to our opponents' suggestion (and the trial court's apparent conclusion), state constitutions can no more authorize discrimination towards religion than they can authorize racial or gender-based discrimination. Finally, we argue that, besides violating the federal neutrality mandate, affirming the trial court's ruling would revive the spirit of anti-religious bigotry that is embodied in state constitutional Blaine Amendments like Florida's, and we encourage the court not to begin a new chapter of anti-religious discrimination by interpreting the provision to require official hostility towards religious educational options.

The Court of Appeals heard arguments in this case on March 18, 2003. Clark Neily argued the case for IJ's clients, Barry Richard argued for the State of Florida, and Bob Chanin argued the case for the Plaintiffs. The panel was well-prepared and quite active in questioning

all of the lawyers. The questioning appeared to be more skeptical of the Plaintiffs' arguments than of ours, but of course subjective impressions of that kind are not particularly reliable indicators for the ultimate outcome of a case. There has been no word about when to expect a decision. Meanwhile, Outreach Coordinator Liz Moser has been working to keep our Pensacola parents involved with the lawsuit, and she has also been working with potential clients in Miami, should we wish to add more intervenors to the suit following the Court of Appeals' decision.

Winn v. Hibbs (IJ-AZ School Choice II)

Court: U.S. District Court for District of Arizona/U.S. Supreme Court
IJ Attorneys: Clint Bolick, Frank Conti and Tim Keller

This is a second challenge to the Arizona Scholarship tax credit. IJ's first attempt to intervene on behalf of program beneficiaries was mooted when the case was dismissed on the state's motion. However, that decision was overturned by the U.S. Court of Appeals for the Ninth Circuit. The state's petition for a writ of *certiorari* in the U.S. Supreme Court is pending. We renewed our intervention motion in the district court, which was granted. We filed a motion to dismiss, which is pending.

Anderson, et al. v. Durham, et al. (Maine School Choice)

Court: Superior Court Cumberland County, ME
IJ Attorneys: Dick Komer and Clark Neily
Local counsel: Jeffrey Edwards

On September 18, 2002, we filed a new lawsuit challenging Maine's exclusion of the choice of religious schools from its local-option school choice program. Under that program, school districts that do not operate public schools (usually high schools) can pay tuition for their students to attend other districts' public schools or private schools. In 1981, Maine eliminated the participation of religious schools, in the belief that the federal Establishment Clause required their exclusion. IJ challenged this exclusion in the *Bagley* case, in which the Maine Supreme Court held that the exclusion was in fact necessary to avoid an Establishment Clause violation. After the U.S. Supreme Court upheld the Cleveland voucher program, the Maine Attorney General issued an opinion letter instructing that districts continue to exclude the choice of religious schools.

IJ represents six families in three tuitioning towns that send their children to two religious high schools, one Catholic and the other Seventh Day Adventist. The defendants are the Maine Education Department and its commissioner and the three town school departments and their superintendents. Our position is that *Zelman* makes clear that the Establishment Clause would not be violated by the inclusion of religious choices in Maine's program, and that the continued exclusion of those choices violates our clients' federal constitutional rights.

The Maine Civil Liberties Union and the Maine Education Association (the NEA's state affiliate) have intervened on behalf of some taxpayers, as they did (with our consent) in the *Bagley* litigation. The case is now assigned to Justice Robert Crowley. The three town school districts moved to be dismissed as they did in *Bagley* on the basis that they are merely following the state law. The judge granted their motion on May 14th and we'll now proceed to discovery.

We anticipate development of a joint stipulation of facts, followed by cross motions for summary judgment

Harrison, et al. v. Gregoire, et al. (Washington Chapter School Choice)

Court Thurston County Superior Court

IJ Attorneys Bill Maurer and Clint Bolick

Local counsel John Turner

This lawsuit became a moving target, as the State sought to avoid Blaine Amendment issues. First, it capitulated on the administrative credential issue, allowing our client, Carolyn Harrison, to student-teach in a religious school. Then, at our hearing for a preliminary injunction, the State contended that Eastern Washington University excludes student-teaching at *all* private schools, not just religious ones. The judge was sympathetic to our case, but on the basis of factual dispute, he denied the injunction for our client, Renee Penhallurick.

To keep the case going, we filed an amended complaint adding the Washington Association of Independent Schools as a plaintiff and several universities with discriminatory policies as defendants. During the course of responding to the state's discovery requests, however, it became apparent that the State's policies were inconsistently applied and subjectively developed with regard to student teaching. Discovery demonstrated that regardless of what a state university's policies actually said, all the state universities remaining in the case had either permitted student teaching in both secular and sectarian private schools or had not permitted student teaching in *any* private schools, regardless of whether the school was sectarian or secular. In that regard, absent expensive and time-consuming discovery, it was unlikely that we would be able to demonstrate that the state consistently and clearly applied policies based on the Blaine Amendment. Because of this, and because the passage of time had made the claims of both individual plaintiffs moot, we decided to dismiss this case. In April, the Washington Chapter filed a motion to voluntarily dismiss the case, which the court granted.

Genier, et al. v. Vermont (Vermont School Choice)

Court U.S. District Court for the District of Vermont

IJ Attorneys Dick Komer and Bob Freedman

Local Counsel Orland Campbell

This case is a federal court challenge to Vermont's exclusion of the choice of religious schools from Vermont's tuitioning system for towns not operating public high schools. Our previous case challenging this exclusion in state court failed when the Vermont Supreme Court held that while the exclusion was not required by the federal Establishment Clause, it was mandated by the Vermont constitution's "compelled support" clause. Because 28 other states also have compelled support clauses in their state constitutions, we want to establish that the broad interpretation given to this language by the Vermont Supreme Court offends federal constitutional rights under the religion clauses, the free speech clause, and the equal protection clause.

We represent two families from tuitioning towns who send their children to two religious schools in Rutland, Vermont, as well as a taxpayer who objects to Vermont's discrimination on

the basis of religion We filed the case on March 20, 2003, and are awaiting the responses of the defendants

Colorado Congress of Parents and Teachers, et al. v. Colorado (School Choice) – New Case
Court – Denver County District Court
Attorneys – Chip Mellor and Dick Komer

A group of school teachers, tax payers, and non-profit groups represented by NEA attorneys filed a challenge on May 20, 2003 to the Colorado Opportunity Contract Pilot Program The program allows low-income children in at least 11 poorly performing districts to receive state funding to attend a participating private school of their choice The program is open to all low-income students who live in these districts, but children who are in the fourth grade and higher can only participate if they are also doing poorly academically

The program has the potential to be the largest school choice program in the nation In its first year, the 2004-2005 school year, one percent of the total children in each district will be allowed to participate That percentage increases every year until 2007 where up to six percent of the students in each district will be allowed to participate Consequently, as many as 20,000 students could participate in the program in the 2007-2008 school year

The teachers' unions and their allies are challenging the program primarily under the Colorado Constitution's religion clauses Colorado has both a compelled support clause and a Blaine Amendment Although the Colorado Supreme Court has not interpreted its Constitution in the context of a school choice program, in 1982, the Colorado Supreme Court in *Americans United v State*, 648 P 2d 1072 (Colo 1982), held that a higher education assistance program that allowed students to use state grants to attend the college of their choice passed muster under both the federal and state religion clauses There is the chance that the current Colorado Supreme Court could distinguish the case on several grounds (for example that younger children are more susceptible to religious indoctrination), but generally the case strongly supports our position that state programs must be neutral towards religion

The program is also being challenged on a number of other state constitutional grounds as well The other provisions are a clause mandating that education in Colorado be uniform, a clause mandating that the use of school funds only be used in the public schools, and finally a provision that gives control over education to the local school boards

We are representing 12 parents who have children eligible to participate in the program On May 30, 2003 we moved to intervene in the case and our motion was granted in a matter of hours Further, we held a press conference at the time of our filing with our clients and community activists The event was covered by four local TV stations and Univision

The State's answer to the teacher unions' original complaint is due June 27th

Locke v. Davey (School Choice *Amicus*) - New Matter
Court U S Supreme Court
IJ Attorney Dick Komer

The Supreme Court granted the state of Washington's cert petition on May 19th IJ filed an *amicus* brief supporting the granting of *cert*, although we made it clear that we also support affirmance of the Ninth Circuit's decision below *Locke* involves Washington's denial of a promise scholarship to Joshua Davey upon his declaring a major in pastoral studies at a religious college, pursuant to Washington's Blaine Amendment The Ninth circuit held that the denial violated the federal Free Exercise of Religion Clause, similar to the claims we make against other states' religion clauses in Florida and Vermont

FIRST AMENDMENT

Taucher, et al. v. Born, et al. (First Amendment CFTC challenge)
Court U S District Court for the District of Columbia
IJ Attorneys Scott Bullock, Steve Simpson, and Chip Mellor

We filed for attorney and expert witness fees under the Equal Access to Justice Act (EAJA) after our successful CFTC challenge After some initial settlement negotiations, the CFTC decided that it would litigate and not agree to any amount We briefed the question of whether the CFTC's position was substantially justified, and, on December 18, 2002, Magistrate Judge John Facciola, to whom the attorney fee question was assigned, issued an opinion against the CFTC, ruling that the agency's position was not "substantially justified" Having determined that the CFTC must pay our attorney fees, he ordered the parties to try to settle the matter, but the parties were unable to do so We filed an amended fee application on February 7, 2003 The CFTC responded in late February and we filed a reply on March 7 Currently we are awaiting a decision on the amount of attorney fees owed to us

Luigi Battaglieri and the Michigan Education Association v. The Mackinac Center
(First Amendment)
Court Circuit Court for the County of Ingham, Michigan
IJ Attorneys Clark Neely, Chip Mellor, and Steve Simpson
Local Counsel Christine Mason Soneral

In this case we are defending the First Amendment rights of a sister-organization that has been sued by the Michigan Education Association (MEA) and its president for "misappropriation of likeness for commercial benefit" and "false light invasion of privacy" for accurately quoting the MEA's president in a year-end fundraising letter as saying he admired what the Mackinac Center had done The Plaintiffs contend that it was improper for the Mackinac Center to use the quote for fundraising purposes without permission and also that the Mackinac Center falsely insinuated that the MEA and its president "endorse" the substance of the Center's work when in fact they do not

In December 2002, the trial court judge denied the parties' cross-motions for summary judgment We filed an interlocutory appeal of that decision in January, and on March 3, 2003,

the Michigan Court of Appeals issued an order granting the request for interlocutory review and staying further proceedings in the trial court pending its ruling on the merits of the appeal. Appellate briefing has been completed and we are awaiting an argument date from the Court of Appeals.

Salib v. City of Mesa (IJ-AZ First Amendment)

Court Superior Court for the State of Arizona, Maricopa County

IJ Attorneys Clint Bolick and Tim Keller

Pro Bono Counsel Court Rich

This is the Arizona Chapter's first referral case. Court Rich is acting as *pro bono* lead counsel in this challenge to the City of Mesa's sign code on behalf of Ed Salib, the owner of a Winchell's donut franchise. At the time of filing, Mesa's sign code prohibited any business located in its downtown redevelopment area from hanging any sign that covered more than 30% of any window pane or casement area. The result was that Salib could not hang even a single sign advertising the monthly specials. Winchell's corporate provides each franchise, for a cost, professionally produced signs.

Since filing this case, the City of Mesa has amended its sign code to require signs cover no more than 30% of the total window space – defined as any set of window panes or casement areas separated by less than six inches. Under this new ordinance, Salib can hang three of the standard signs provided by Winchell's corporate. We are proceeding with the suit in the face of this amendment and depositions of several City officials were taken in June. The City filed a Motion to Dismiss alleging a failure to exhaust administrative remedies. Oral argument on that motion is scheduled for September 3, 2003.

Simpson v. City of Peoria (IJ-AZ First Amendment Case)

Court Superior Court for the State of Arizona, Maricopa County

IJ Attorneys Tim Keller

Pro Bono Counsel Tom Liddy

In late 2002, the City of Peoria cited Jason Simpson, the owner and operator of Peoria Auto Sales, for hanging over 100 miniature American flags on his car lot calling the flags "visual clutter" and threatening Simpson with six months in prison and \$1000 in fines if he did not remove the flags. In December 2002, the Arizona Chapter filed a Motion for Preliminary Injunction and a Complaint seeking declaratory and injunctive relief in the Maricopa County Superior Court. At the hearing on our Preliminary Injunction motion, the City admitted its sign code was unconstitutional and told the judge that no prosecution would occur under the ordinance pending its amendment of the ordinance. The City adopted a new ordinance, but did not amend the provisions challenged in the complaint.

New Orleans Book Vending, Wexler v. New Orleans (First Amendment and Economic Liberty)

Court U S District Court for Eastern District of Louisiana, Judge Stanwood R Duval, Jr
IJ Attorneys Dana Berliner and Chip Mellor
Local Counsel Robert Eitel

On April 9, 2003, we filed our lawsuit against the City of New Orleans on behalf of two plaintiffs, Josh Wexler and Anne Jordan Blanton ("Jordan") For the last year, City officials have told them that they needed to have a permit to vend on the street and there was no permit to sell books Therefore, they could not sell them In addition, they would like to sell blank journals We then filed a motion for temporary restraining order and preliminary injunction on April 14, 2003 On that same day, we had a two hour conference with the Judge The next day, April 15, 2003, he issued a short opinion granted the temporary restraining order and setting a hearing on the preliminary injunction for April 30, 2003 At the conference, the opposing counsel made it clear that he planned to focus on the question of whether Josh and Jordan could have a table, not whether they could sell books

Before the preliminary injunction hearing, we submitted a full-length brief addressing the free speech violations of the current law At the April 30, 2003 hearing, both of our plaintiffs testified, and we also submitted pictures and measurements of the various locations they want to operate The City presented no evidence but established that the plaintiffs do not know of any particular City opposition to the kinds of books they sell That was part of the City's theory that there is no discrimination on the content of speech

On June 16, 2003, the district court granted our motion for preliminary injunction He held not only that the current ordinance violates free speech but also that the city's proposal to change the ordinance to ban all tables and chairs would violate free speech as well He pointed out that a table is the only reasonable means to sell books and that the city's position left our clients without any reasonable alternative method of communication Such an alternative is one of the requirements for an ordinance to survive a free speech challenge He also held that a ban on tables and chairs should be analyzed under the first amendment and not treated as an economic liberty issue Finally, the Court sua sponte converted the preliminary injunction into a permanent one and closed the case

Shortly after this, we moved to alter or amend the judgment to add one more location that the Plaintiffs could sell books At the hearing, we had asked for four locations, three of which had more than 12-foot sidewalks, one of which had only a 10-foot sidewalk The order in the June 16, 2003 decision duplicated the TRO decision and only mentioned the first two locations We had a telephone status conference with the Judge He decided that he would add the additional 12-foot sidewalk location, but not the 10-foot one

ForSaleByOwner.com, et al. v. Zinneman, et al. (First Amendment)

Court U S District Court for the Eastern District of California, Judge Morrison C England
(Sacramento)

IJ Attorneys Steve Simpson and Chip Mellor

Local Counsel Dan Kelleher of O'Brien & Kelleher

On May 14, 2003, we filed a lawsuit against the California Commissioner of Real Estate and the Attorney General challenging the State's real estate broker licensing provisions. Our clients are ForSaleByOwner.com, an on-line real estate classified ad service, and its California affiliate, Jeff Chadbourne, who publishes ForSaleByOwner Magazine in Sacramento. In August, 2001, the California Department of Real Estate began sending letters to on-line real estate classified ad companies such as ForSaleByOwner.com claiming that they needed a real estate brokers license in order to list properties for sale on their sites. Obtaining a real estate brokers license takes several years and would be cost prohibitive for companies such as ForSaleByOwner.com. We contend that requiring such companies to obtain a brokers license violates the First Amendment by erecting a prior restraint on free speech, unconstitutionally regulating commercial speech, and unconstitutionally discriminating on the basis of the medium used to convey information (the licensing law expressly exempts newspaper classified ads).

ECONOMIC LIBERTY

Craigmiles, et al. v. Giles, et al. (Economic Liberty)

Court U S Court of Appeals for the Sixth Circuit (appeal from the E D of Tennessee)

IJ Attorneys Chip Mellor and Steve Simpson

Local Counsel Hal North of Chattanooga's Shumacker and Thompson

The State did not file a petition for *certiorari*. On April 30th, IJ and the State filed an Agreed Order for costs to be taxed against the State in the amount of \$4,429.63.

Powers, et al. v. Harris, et al. (Economic Liberty)

Court U S Court of Appeals for the Tenth Circuit (appeal from the W D of Oklahoma)

IJ Attorneys Chip Mellor and Clark Neily

Local Counsel Andrew Lester

After a two-day bench trial in November, Judge Stephen Friot issued a 34-page opinion in which he concluded that although he was "not persuaded that the provisions in question advance the cause of consumer protection" and despite his belief that "the actual motivation for enactment of the challenged legislation was, in all likelihood, far less altruistic than the rationales" proffered by the State of Oklahoma (i.e., consumer protection), he was nevertheless obliged to uphold the casket sales restrictions because to do otherwise would be to substitute his policy judgment for that of the legislature.

We have appealed the trial court's decision to the Tenth Circuit Court of Appeals. Briefing has been completed and we are awaiting an oral argument date.

Swedenburg, et al. v. Kelly, et al. (Economic Liberty)

Court U.S. District Court for the Southern District of New York

IJ Attorneys Clint Bolick and Steve Simpson

Local Counsel Lance Gotko

We prevailed in the U.S. District Court for the Southern District of New York in our challenge to New York's prohibition of direct interstate sale and shipment of wine to consumers. The matter of attorney fees was stayed pending appeal. The case on appeal is fully briefed.

Direct Shipping Amicus Briefs

We have filed amicus briefs in nearly every other direct shipping case pending before federal appellate courts across the country. In each, we have focused primarily on the commerce clause and 21st Amendment issues, but have raised Article IV privileges and immunities clause issues as well even though the plaintiffs in those cases did not bring claims under the clause. In several of the briefs, we opposed the state's argument that the proper remedy for a violation of the commerce clause would be to strike down the law allowing in-state direct shipping, rather than to strike down the ban on out-of-state direct shipping. In each case we filed the briefs on behalf of Juanita Swedenburg and David Lucas.

Heald v. Engler (Economic Liberty Amicus)

Court U.S. Court of Appeals for the Sixth Circuit (appeal from the E.D. of Michigan)

IJ Attorneys Clint Bolick and Steve Simpson

This is an appeal from a district court order granting the State of Michigan's motion to dismiss a challenge to Michigan's direct shipping ban. We filed our amicus brief on February 22, 2002. The case was just argued before the Sixth Circuit on May 7, 2003, but no decision has yet been issued.

Beskind v. Easley (Economic Liberty Amicus)

Court U.S. Court of Appeals for the Fourth Circuit (appeal from the W.D. of North Carolina)

IJ Attorneys Clint Bolick and Steve Simpson

This is an appeal from a district court order granting summary judgment to the plaintiffs in a challenge to North Carolina's direct shipping ban. The Fourth Circuit recently issued a mixed decision affirming the district court's conclusion that a ban on direct shipping from out-of-state violated the dormant commerce clause, but reversing the district court's remedy and striking down the law allowing in-state direct shipping. The plaintiffs filed a motion for rehearing en banc, which was denied.

Bolick v. Roberts (Economic Liberty Amicus)

Court U.S. Court of Appeals for the Fourth Circuit (appeal from the N.D. of Virginia)

IJ Attorneys Chip Mellor and Steve Simpson

This is an appeal from a district court order granting summary judgment to the plaintiffs in a challenge to Virginia's direct shipping ban. On April 9, 2003, while the case was pending,

Virginia passed a law allowing direct shipping from out-of-state wineries on substantially similar terms as in-state wineries. In light of this change in the law, the State moved to dismiss the appeal on grounds of mootness, and the Fourth Circuit recently remanded the case to the district court with instructions to vacate its previous decision and consider whether the case is now moot.

Dickerson v. Bailey (Economic Liberty *Amicus*)

Court: U.S. Court of Appeals for the Fifth Circuit (appeal from the S.D. of Texas)

IJ Attorneys: Clint Bolick and Steve Simpson

This is an appeal from a district court order granting summary judgment to the plaintiffs in a challenge to Texas's direct shipping ban. The Fifth Circuit recently issued a decision affirming the district court's decision in its entirety and rendering the law at issue unconstitutional.

Cornwell v. Board of Governors of UNC, et al. (North Carolina Chapter Economic Liberty & Property Rights) – New Case

Court: Wake County Superior Court

IJ Attorneys: Clark Neily and Heather Royster

This lawsuit was a challenge to a refusal by North Carolina State University to grant press credentials to media sources that are strictly "online," or operate solely on the World Wide Web.

Ventenbergs, et al. v. City of Seattle, et al. (Washington Chapter Economic Liberty) – New Case

Court: King County Superior Court

IJ Attorneys: William R. Maurer and Jeanette M. Petersen

The Institute for Justice Washington Chapter filed its launch case in King County Superior Court on May 13, 2003. The suit challenges the City of Seattle's grant of territorial monopolies for the hauling of construction and demolition waste within the boundaries of the City. IJ-WA represents Joe Ventenbergs and the small, independent trucking company he owns, Kendall Trucking, Inc. The City's grant of territorial monopolies to two large, out-of-state companies threatens to make about 60% of Joe's business illegal. IJ-WA's other client is Ron Haider and Haider Construction, Inc. Ron has been using Joe to haul construction waste from his construction sites and wishes to have the option to continue to use Joe, rather than solely being restricted to using the City's chosen monopolists.

The suit seeks a declaratory judgment that the municipal ordinance granting such territorial monopolies constitutes illegal economic favoritism in violation of the Washington State Constitution's Privileges or Immunities Clause. The suit also seeks to have the court declare that the ordinance illegally impairs the contract between Joe and Ron in violation of the Contracts Clause of the Washington State Constitution. Finally, the suit seeks a permanent injunction against the Seattle Department of Public Utilities from enforcing the ordinance.

The City has yet to file an answer.

PROPERTY RIGHTS

Kelo, et al. v. City of New London, et al. (Connecticut Eminent Domain)

Court. Superior Court of New London

IJ Attorneys Scott Bullock, Dana Berliner, and Clark Neily

Local Counsel Scott Sawyer

New London Superior Court Judge Thomas Corradino issued a 249 page opinion on March 13, 2002. Out of the 15 homes at issue, the Judge ruled that 11 of them could not be condemned. In addition, he stayed his decision as to the other four homes pending the outcome of the appeal. The Connecticut Supreme Court has taken jurisdiction over the case, so we will skip the Connecticut Appellate Court altogether.

The court ruled in favor of the homeowners on the grounds of lack of necessity and lack of assurances of future public use. The NLDC (the nonprofit doing the condemnations) had no plans for 11 of the homes it was condemning. We argued, and the court agreed, that it was impossible to say if the condemnations were necessary, since no one knew what the land would be used for. Similarly, one couldn't say if there were sufficient assurances of future public use, since no one knew what the public use would be.

We appealed on behalf of the three owners who did not win, and the City and NLDC cross-appealed on all other issues. We filed our opening appeal brief on July 2, 2002 and our reply brief on September 3. The case was argued on December 2, 2002 before a panel of five judges from the Court. In February 2003, we received notice from the Court that all seven members of the Court will now consider and rule on the matter (with no extra briefing or argument). We await a decision.

Mississippi Major Economic Impact Authority v. Andrew Archie, Jr., Lonzo Archie and Matilda Archie and Percy Lee and Minnie Pearl Bouldin (Eminent Domain Cases)

Court. Special Court of Eminent Domain, Madison County, Mississippi

IJ Attorneys Scott Bullock, Dana Berliner, and Steve Simpson

Local Counsel James Ross, Monroe, Louisiana

As set forth in the last Board report, the State agreed to drop eminent domain actions against the Archie family, thereby permitting to stay on their land.

Because the State dismissed its own eminent domain actions against the Archies, it had to pay our attorney fees and expenses. On September 9, 2002, we had a hearing before the trial judge on the dismissal orders and he told the parties to sort out the details. We had 90 days to try to reach agreement with the other side on fees. The State informed us that it would not pay any of our fees, so, on January 9, 2003, we submitted our application for \$107,000 to the court and set forth the reasons why the State was obligated to reimburse us. The State finally relented and began settlement negotiations. On February 14, 2003, the State of Mississippi agreed to settle our claim for \$97,375, thus eliminating the need to litigate this matter.

We have received and cashed the check from the State. In April 2003, the Archies celebrated the one-year anniversary of the dropping of the eminent domain suits. They are happy on their land and in their homes—in fact more family members are now moving to the land. The

Nissan plant officially opened in May 2003 This case is now closed

Minnich, et al., v. Gargano, et al. (New York Eminent Domain)

Court Judge Harold Baer, U S District Court for the Southern District of New York

U S Court of Appeals for the Second Circuit (appeal of preliminary injunction)

IJ Attorneys Dana Berliner and Chip Mellor

Local Counsel Marty Kaufman, Atlantic Legal Foundation

All briefing is complete Oral argument was held on June 2, 2003 at the Second Circuit We argued that the district court should not have dismissed the case for res judicata We also countered the Village of Port Chester's argument that Bill Brody lacks standing In addition, the Village had filed a motion to dismiss as moot, which we argued about as well Although Port Chester was also appealing the denial of attorneys' fees to it, that issue was not mentioned at oral argument We hope for a remand to allow us to finally get to the merits of our initial procedural due process claim challenging New York's Eminent Domain Procedure Law

State of New Jersey v. One 1990 Ford Thunderbird/Thomas v. Farmer (Forfeiture Case)

Court Superior Court of New Jersey, Cumberland/Salem County

IJ Attorneys Scott Bullock, Deborah Simpson, and Chip Mellor

Local Counsel Joseph Chiarello

In this case, we challenge the direct profit incentive underlying New Jersey's civil forfeiture law, whereby law enforcement officials are entitled to keep the proceeds and property generated by forfeiture We argued that this scheme violates the due process guarantees of the U S and New Jersey constitutions We represent Carol Thomas, a former sheriff's deputy in Millville, New Jersey, whose son used her car without her knowledge or consent to sell marijuana to an undercover officer The state arrested her son and filed a forfeiture action against her car, *State of New Jersey v One 1990 Ford Thunderbird* In addition to defending against the forfeiture action on behalf of Thomas, we filed a counterclaim in state court raising our constitutional arguments We secured the return of her car and went on brief and argue the constitutional claim

Oral argument on the cross motions for summary judgment occurred on November 12, 2002 and, a month later, the trial judge declared the statutory section being challenged unconstitutional under the due process clauses of the U S and New Jersey constitutions The judge stayed his ruling pending appeal The State will file its appellate brief in June 2003 and we must file our reply in August Oral argument is expected later in the year

City of Mesa v. Bailey (Arizona Chapter Eminent Domain)

Court Arizona Court of Appeals

IJ Attorneys Clint Bolick and Tim Keller

Co-Counsel Dale Zeitlin

We continue to await a decision from the Court of Appeals In the meantime, the demolition of Bailey's property and construction of the hardware store that were to have commenced last summer have not occurred Legislation to curb municipal eminent domain

abuses has passed the Arizona legislature and was signed by the governor

City of Tempe v. Pillow (IJ-AZ Eminent Domain *Amicus*)

Court Marcopa County Superior Court

IJ Attorneys Clint Bolick and Tim Keller

The City of Tempe has filed condemnation proceedings against Kenneth and Mary Ann Pillow, an elderly couple who has lived in their home since the 1960s. The City plans to acquire their land and turn it over to a developer who plans to construct town homes. We filed a motion requesting permission to file an *amicus* brief, which was opposed vigorously by the City of Tempe. The City even requested oral argument in its response opposing our motion. The Superior Court granted our motion without oral argument.

Utah Civil Forfeiture Case (Property Rights)

Court State Court

IJ Attorneys Scott Bullock and Chip Mellor

Local Counsel Andrew Stavros, Jenson & Stavros

In this case, we plan on challenging an attempt by Utah law enforcement officials in the state's three largest counties to evade a citizen-approved initiative that eliminated the perverse (and unconstitutional) profit incentive that formerly led to forfeiture abuse in the state. The initiative, passed in 2000 with almost 70% of the vote, ended the same practice the trial court found unconstitutional in our New Jersey forfeiture litigation—giving police and prosecutors a direct profit incentive to take property. Under the initiative, all forfeited property and revenue must go to the education fund of the state. The district attorneys in Weber, Salt Lake, and Davis counties refuse to abide by the initiative and have so far kept at least \$238,000 for their own benefit. We plan on filing a mandamus action on behalf of Utah taxpayers to build upon our success in New Jersey and to ensure that public officials cannot evade citizen efforts to force changes to unconstitutional state practices.

The Board approved this case in May 2003 and we are in the process of putting the case together for filing with the Attorney General in June. We filed a Notice of Claim with the Attorney General on June 24, 2003 asking for a response within 21 days.

Saleet, et al. v. City of Lakewood (Property Rights – Blight Case) – New Case

Court Court of Common Pleas, Cuyahoga County, Ohio

IJ Attorneys Dana Berliner and Bert Gall

Local Counsel Michael Gareau, Sr. and David Gareau

On May 19, 2003, we filed suit in the state trial court asking for declaratory and injunctive relief preventing the City of Lakewood from condemning our clients' 12 homes and 6 businesses based on its finding that they are "blighted." The city is using its sham blight designation as a legal justification to transfer our clients' properties to private developers; these developers will then build condominiums and "high-end" retail on top of the property. The city is claiming that our clients' properties are "blighted" because, among other things, many of them do not have a two-car attached garage or two full bathrooms. We contend that this ridiculous

finding does not conform to the city's and state's legal definitions of "blight." We also claim that taking our client's property for the private use of private developers violates the "public use" clauses of the federal and Ohio constitutions, and that the City violated the equal protection clauses of both constitutions in its selection of which properties are to be demolished and which are to be spared.

The City filed a motion to dismiss the lawsuit on June 6, the court denied the motion on June 25.

Rukab v. City of Jacksonville Beach (Eminent Domain *Amicus*) – New Matter

Court: Florida Appellate Court

IJ Attorneys: Dana Berliner

Other Counsel: Ilya Somin, former IJ clerk and future George Mason law professor

The City of Jacksonville Beach has been trying to condemn Tony and Aida Rukab's property for retail development that will supposedly increase the tax base. This is the same thing that is happening throughout the rest of the country. And just as in the rest of the country, the city declared the property blighted on the grounds that it would produce more taxes as something else. The case had been up to the appellate court once before, at which time the appellate court told the trial court to accept evidence and decide the public use question. The trial court ruled that it was a public use and based its decision on the recent New York decision upholding condemnations for the New York Times.

On May 29, 2003, we filed an amicus brief in the Florida appellate court. We worked on the brief with Ilya Somin, who had been serving as a fellow at Northwestern Law School and starts as a professor at George Mason Law School in the Fall.

City of Las Vegas Redevelopment Agency; Fremont Street Experience Limited Liability Company, and Fremont Street Experience Parking Corp. v. Carol Pappas; John H. Pappas, Jr.; and Harry J. Pappas (Nevada Eminent Domain *Amicus* Brief)

Court: Nevada Supreme Court

IJ Attorneys: Dana Berliner and Bert Gall

Oral argument in the Nevada Supreme Court was held in December, 2002, and we are awaiting a decision on whether Las Vegas had the power to take Mrs. Pappas' building.

99 Cents Only Store v. Lancaster Redevelopment Agency (Eminent Domain *Amicus* Brief)

Court: U.S. District Court for Central District of California

IJ Attorneys: Bob Freedman and Dana Berliner

We filed an amicus brief in the Ninth Circuit asking them to affirm the district court's decision. The Ninth Circuit dismissed the appeal as moot, because Lancaster built Costco another store in a different location. Now, Lancaster has moved to get the original opinion vacated. We did not file an amicus brief on that motion and now await the district court's decision.

MISCELLANEOUS

Hollywood Incentives – (North Carolina Chapter Incentives)

Court Wake County Superior Court

IJ Attorneys Clark Neily and Heather Royster

This is the launch case of the Institute for Justice North Carolina Chapter, which was filed in Wake County Superior Court on February 20, 2003. The case is a challenge to North Carolina's "Film Industry Development Account." The plaintiffs are Raleigh businessman Edward Jones and the Wake County Taxpayers' Association.

IJ-NC contends that the film account, which provides for payments of tax dollars in amounts of up to \$200,000 to "production companies" filming in North Carolina, violates Article V, Sections 1 and 2 of the North Carolina Constitution. Those sections mandate that the taxing and spending power of the State be exercised only for a "public purpose," or a purpose that benefits primarily the public rather than private, for-profit entities. The film account, which does not require that recipients of the funds hire North Carolina workers, contract with North Carolina businesses, or purchase North Carolina products, does not benefit the public, and therefore violates the NC Constitution.

We received a response from Defendants in the form of a Motion to Dismiss our complaint. A hearing on the motion has been set for August 11, 2003. Clark Neily, who is serving as interim director of the NC Chapter, has been admitted pro hac vice and has taken over as lead counsel on the case.

Barrow v. Greenville Independent School District (Parental Liberty *Amicus* Brief)

Court U.S. Court of Appeals for the Fifth Circuit

IJ Attorney Bob Freedman

The case concerned a public school teacher who was denied promotion because her children attended a private school. The district court held that parental liberty – the right of parents to direct the education and upbringing of their children – is subject to any reasonable regulation by the state and therefore only protected by "rational basis review." The Institute filed a brief charting the fundamental importance of parental liberty in Western culture, common law traditions, and in Supreme Court jurisprudence. The Institute's brief was joined by the Council for American Private Education, a coalition of 17 private school organizations that collectively instruct more than 80% of all private school students in the United States. The brief was filed on May 28, 2002. The court issued a decision recently reversing the district court's decision.

Fitzgerald v. Racing Association of Central Iowa (Equal Protection Rational Basis *Amicus* Brief)

Court U.S. Supreme Court

IJ Attorney Clint Bolick

Rejecting IJ's position in its *amicus* brief, the U.S. Supreme Court upheld a discriminatory tax under the rational basis test of the equal protection clause.

Grutter v. Bollinger; Gratz v. Bollinger (Racial Preferences *Amicus* Brief)

Court U S Supreme Court

IJ Attorney Clint Bolick

Disagreeing with IJ's *amicus* brief on behalf of itself and the Center for New Black Leadership, the U S Supreme Court held that the supposed educational benefits of a racially diverse student body constituted a compelling objective for a public university, and that the use of racial preferences to achieve a "critical mass" of specified minority students is narrowly tailored to that purpose. The Court agreed with IJ that conferring a specified number of points upon an applicant on the basis of race is unconstitutional.

Lawrence v. State of Texas (Public Morality *Amicus* Brief)

Court U S Supreme Court

IJ Attorneys Bob Freedman and Dana Berliner

In our *amicus* brief we argued that Texas' law criminalizing private same-sex sexual activity goes beyond the legitimate power of government. Oral argument was held on March 26, 2002. The Supreme Court issued its 6-3 decision in June 2003, ruling that Texas' prohibition had no rational basis. Justice O'Connor concurred in the result and opined that the case should be decided on equal protection grounds. The majority opinion, however, relied on substantive due process. It held there was no legitimate purpose for the law, a point that we made in our brief as well.

Form **4562**Department of the Treasury
Internal Revenue Service**Depreciation and Amortization** 990
(Including Information on Listed Property)

▶ See separate instructions

▶ Attach to your tax return

OMB No 1545-0172

2002Attachment
Sequence No 87

Name(s) shown on return

Business or activity to which this form relates

Identifying number

INSTITUTE FOR JUSTICE

FORM 990 PAGE 2

52-1744337

Part I Election To Expense Certain Tangible Property Under Section 179 Note If you have any listed property complete Part V before you complete Part I

1	Maximum amount See instructions for a higher limit for certain businesses	1	24,000.
2	Total cost of section 179 property placed in service (see instructions)	2	
3	Threshold cost of section 179 property before reduction in limitation	3	\$200,000
4	Reduction in limitation Subtract line 3 from line 2 If zero or less, enter -0	4	
5	Dollar limitation for tax year Subtract line 4 from line 1 If zero or less, enter -0- If married filing separately, see instructions	5	
6	(a) Description of property	(b) Cost (business use only)	(c) Elected cost
7	Listed property Enter amount from line 29	7	
8	Total elected cost of section 179 property Add amounts in column (c), lines 6 and 7	8	
9	Tentative deduction Enter the smaller of line 5 or line 8	9	
10	Carryover of disallowed deduction from line 13 of your 2001 Form 4562	10	
11	Business income limitation Enter the smaller of business income (not less than zero) or line 5	11	
12	Section 179 expense deduction Add lines 9 and 10, but do not enter more than line 11	12	
13	Carryover of disallowed deduction to 2003 Add lines 9 and 10, less line 12	13	

Note Do not use Part II or Part III below for listed property Instead, use Part V

Part II Special Depreciation Allowance and Other Depreciation (Do not include listed property)

14	Special depreciation allowance for qualified property (other than listed property) placed in service during the tax year (see instructions)	14	
15	Property subject to section 168(f)(1) election (see instructions)	15	
16	Other depreciation (including ACRS) (see instructions)	16	147,524.

Part III MACRS Depreciation (Do not include listed property) (See instructions)**Section A**

17	MACRS deductions for assets placed in service in tax years beginning before 2002	17	
18	If you are electing under section 168(f)(4) to group any assets placed in service during the tax year into one or more general asset accounts, check here		

Section B - Assets Placed in Service During 2002 Tax Year Using the General Depreciation System

(a) Classification of property	(b) Month and year placed in service	(c) Basis for depreciation (business/investment use only see instructions)	(d) Recovery period	(e) Convention	(f) Method	(g) Depreciation deduction
19a 3 year property						
b 5-year property						
c 7-year property						
d 10 year property						
e 15 year property						
f 20 year property						
g 25 year property			25 yrs		S/L	
h Residential rental property	/		27 5 yrs	MM	S/L	
i Nonresidential real property	/		39 yrs	MM	S/L	

Section C - Assets Placed in Service During 2002 Tax Year Using the Alternative Depreciation System

20a Class life					S/L	
b 12 year			12 yrs		S/L	
c 40 year	/		40 yrs	MM	S/L	

Part IV Summary (See instructions)

21	Listed property Enter amount from line 28	21	
22	Total Add amounts from line 12, lines 14 through 17, lines 19 and 20 in column (g), and line 21 Enter here and on the appropriate lines of your return Partnerships and S corporations see instr	22	147,524.
23	For assets shown above and placed in service during the current year, enter the portion of the basis attributable to section 263A costs	23	

Part V Listed Property (Include automobiles, certain other vehicles, cellular telephones, certain computers, and property used for entertainment, recreation, or amusement)**Note** For any vehicle for which you are using the standard mileage rate or deducting lease expense, complete only 24a, 24b, columns (a) through (c) of Section A, all of Section B, and Section C if applicable**Section A - Depreciation and Other Information** (Caution See instructions for limits for passenger automobiles)**24a** Do you have evidence to support the business/investment use claimed? ☐ Yes ☐ No **24b** If "Yes," is the evidence written? ☐ Yes ☐ No

(a) Type of property (list vehicles first)	(b) Date placed in service	(c) Business/ investment use percentage	(d) Cost or other basis	(e) Basis for depreciation (business/investment use only)	(f) Recovery period	(g) Method/ Convention	(h) Depreciation deduction	(i) Elected section 179 cost
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25 Special depreciation allowance for qualified listed property placed in service during the tax year and used more than 50% in a qualified business use**25****26** Property used more than 50% in a qualified business use

		%						
		%						
		%						

27 Property used 50% or less in a qualified business use

		%			S/L		
		%			S/L		
		%			S/L		

28 Add amounts in column (h), lines 25 through 27 Enter here and on line 21, page 1**28****29** Add amounts in column (i), line 26 Enter here and on line 7, page 1**29****Section B - Information on Use of Vehicles**

Complete this section for vehicles used by a sole proprietor, partner, or other "more than 5% owner," or related person

If you provided vehicles to your employees, first answer the questions in Section C to see if you meet an exception to completing this section for those vehicles

	(a) Vehicle	(b) Vehicle	(c) Vehicle	(d) Vehicle	(e) Vehicle	(f) Vehicle
30 Total business/investment miles driven during the year (do not include commuting miles)						
31 Total commuting miles driven during the year						
32 Total other personal (noncommuting) miles driven						
33 Total miles driven during the year Add lines 30 through 32						
34 Was the vehicle available for personal use during off-duty hours?	Yes No	Yes No	Yes No	Yes No	Yes No	Yes No
35 Was the vehicle used primarily by a more than 5% owner or related person?						
36 Is another vehicle available for personal use?						

Section C - Questions for Employers Who Provide Vehicles for Use by Their Employees

Answer these questions to determine if you meet an exception to completing Section B for vehicles used by employees who are not more than 5% owners or related persons

37 Do you maintain a written policy statement that prohibits all personal use of vehicles, including commuting, by your employees?	Yes	No
38 Do you maintain a written policy statement that prohibits personal use of vehicles, except commuting, by your employees? See instructions for vehicles used by corporate officers, directors, or 1% or more owners		
39 Do you treat all use of vehicles by employees as personal use?		
40 Do you provide more than five vehicles to your employees, obtain information from your employees about the use of the vehicles, and retain the information received?		
41 Do you meet the requirements concerning qualified automobile demonstration use?		

Note If your answer to 37, 38, 39, 40, or 41 is "Yes," do not complete Section B for the covered vehicles**Part VI Amortization**

(a) Description of costs	(b) Date amortization begins	(c) Amortizable amount	(d) Code section	(e) Amortization period or percentage	(f) Amortization for this year
42 Amortization of costs that begins during your 2002 tax year					
43 Amortization of costs that began before your 2002 tax year				43	
44 Total Add amounts in column (f) See instructions for where to report				44	

Application for Extension of Time To File an Exempt Organization Return

OMB No 1545 1709

► File a separate application for each return

- If you are filing for an **Automatic 3-Month Extension**, complete only **Part I** and check this box ☒
 - If you are filing for an **Additional (not automatic) 3-Month Extension**, complete only **Part II** (on page 2 of this form)
- Note.** Do not complete **Part II** unless you have already been granted an automatic 3-month extension on a previously filed Form 8868.

Part I Automatic 3-Month Extension of Time - Only submit original (no copies needed)

Note Form 990-T corporations requesting an automatic 6-month extension - check this box and complete **Part I** only ☐
All other corporations (including Form 990-C filers) must use Form 7004 to request an extension of time to file income tax returns. Partnerships, REMICs and trusts must use Form 8736 to request an extension of time to file Form 1065, 1066, or 1041

Type or print	Name of Exempt Organization INSTITUTE FOR JUSTICE	Employer identification number 52-1744337
File by the due date for filing your return. See instructions	Number, street, and room or suite no. If a P O box, see instructions 1717 PENNSYLVANIA AVENUE, NW, NO. 200	
	City, town or post office state, and ZIP code For a foreign address see instructions WASHINGTON, DC 20006	

Check type of return to be filed (file a separate application for each return)

- | | | |
|--|--|------------------------------------|
| <input checked="" type="checkbox"/> Form 990 | <input type="checkbox"/> Form 990 T (corporation) | <input type="checkbox"/> Form 4720 |
| <input type="checkbox"/> Form 990-BL | <input type="checkbox"/> Form 990 T (sec 401(a) or 408(a) trust) | <input type="checkbox"/> Form 5227 |
| <input type="checkbox"/> Form 990-EZ | <input type="checkbox"/> Form 990 T (trust other than above) | <input type="checkbox"/> Form 6069 |
| <input type="checkbox"/> Form 990-PF | <input type="checkbox"/> Form 1041 A | <input type="checkbox"/> Form 8870 |

- If the organization does not have an office or place of business in the United States, check this box ☐
- If this is for a **Group Return**, enter the organization's four digit Group Exemption Number (GEN) _____ If this is for the **whole** group check this box ☐ If it is for part of the group check this box ☐ and attach a list with the names and EINs of all members the extension will cover

- 1 I request an automatic 3-month (6 month, for **990-T corporation**) extension of time until **FEBRUARY 17, 2004**
to file the exempt organization return for the organization named above. The extension is for the organization's return for
► ☐ calendar year _____ or
► ☒ tax year beginning **JUL 1, 2002**, and ending **JUN 30, 2003**

- 2 If this tax year is for less than 12 months, check reason ☐ Initial return ☐ Final return ☐ Change in accounting period

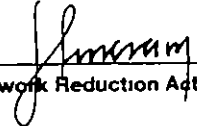
- 3a If this application is for Form 990-BL, 990-PF, 990-T, 4720, or 6069, enter the tentative tax, less any nonrefundable credits. See instructions \$ _____

- b If this application is for Form 990-PF or 990-T, enter any refundable credits and estimated tax payments made. Include any prior year overpayment allowed as a credit \$ _____

- c **Balance Due** Subtract line 3b from line 3a. Include your payment with this form, or, if required, deposit with FTD coupon or, if required by using EFTPS (Electronic Federal Tax Payment System) See instructions \$ **N/A**

Signature and Verification

Under penalties of perjury, I declare that I have examined this form, including accompanying schedules and statements and to the best of my knowledge and belief, it is true, correct and complete and that I am authorized to prepare this form

Signature ►  Title ► **C.P.A.** Date ► **11/05/03**
LHA For Paperwork Reduction Act Notice, see instruction Form **8868** (12-2000)